IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Civil Writ Petition No.1015 of 2001

Judgement reserved on:2.3.2007

Date of decision: 6.03.2007

Smt. Nirmala Devi **Petitioner**

Versus

Union of India and others. **Respondents**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1] *no*

For the Petitioner: **Mr. Ajay Sharma, Advocate.**

For the Respondents : **Mr. Ravinder Thakur, Central Governmment Counsel.**

Dev Darshan Sud,J.

This petition has been filed by Smt. Nirmala Devi, wife of late Sepoy Balbir Singh with a prayer that the orders passed by the respondents rejecting her claim for disability pension of her husband should be quashed and set aside.

According to the averments made in the petition, the husband of the petitioner was enrolled in Dogra Regiment on 28th December, 1989, whereafter he was posted in various filed units. It has been averred that at the time when the husband of the petitioner joined Army, he was hale and hearty and that he contacted the

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement***? Yes.

disease (from which he died later on) while serving in the Army. According to the petitioner, she is entitled to disability pension in accordance with law.

The record shows that on 12th May, 1988 and subsequently on 18th June, 2001 and 18th July, 2001 (Annexures P-1 to P-3), the petitioner was informed that the disability from which he suffered during Army service, "(a) is not attributable to military service; (b) does not fulfil the conditions, namely it existed before or arose during military service and has been not remained aggravated thereby; (c) accordingly no disability pension is admissible under rules."

In reply to the writ petition, respondents have submitted that the husband of the petitioner was suffering from synovial sarcoma left axilla. He was admitted in Command Hospital where specialists attended upon him and on 17th April, 1996, it was recommended that he should be invalided out of service in low medical category. He was again brought to the hospital on 28th May, 1996. Medical Board proceedings were approved by the HQ 16 Corps. The disability was assessed at 100% and it was stated that it was neither attributable to nor aggravated by military service. The medical report Annexure R-1, has been placed on record to substantiate these allegations.

In the medical report, the finding is that the petitioner did not suffer from the disease/disability before entering military service. However, the report

leaves much to be desired. Column No.2 of Part-III of the report, inter-alia, states as under:-

> "The Board should state fully the reasons in regard to each disability on which its opinion is based."

In fact, each part of column No.2 requires detailed reasons to be submitted. Clauses (b) and (c) of column-2 read as under:-

> "(b) In respect of each disability shown as attributable under A, the Board should state fully, the specific condition and period in service which caused the disability."
>
> "(c) In respect of each disability shown as aggravated under B, the Board should state fully:
>
> (i) The specific condition and period in service which aggravated the disability.
>
> (ii) Whether the effects of such aggravation still persist."

Obviously, detailed reasons are required to be recorded against these columns. Although the report further says that it is a neoplestic disability not connected with the military service, I do not find any compliance with the column No.2 and the opinion of the Medical Board giving reasons is lacking. In these circumstances, it is not possible to accept the report as it is.

I have given my thoughtful consideration to the matter. The husband of the petitioner died on 10.6.1996. It is not disputed that he was absolutely fit when he joined Army service in the year 1990. The record

also suggests that the petitioner was receiving specialist medical treatment from the respondents. To deny the right of pension to the wife, who alleges that the sole bread winner of the family has died, is rather harsh. In these circumstances, it is directed that the respondents will reconsider the matter and state the reasons in regard to each disability on which opinion is based as shown in column No.2 of Part-III of the report (Annexure R-1). This exercise be completed within six months from today after giving the petitioner a chance of making representation, if she may desire so. The respondents shall ensure speedy and expeditious disposal of the claim filed by the petitioner. The writ petition is disposed of with these directions. There shall be no order as to costs.

March 6, 2007 **(Dev Darshan Sud)**
(ss) **Judge**